

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CLYDE LEWIS,

Plaintiff,

v.

JAMES DZURENDA, et al.,

Defendants.

Case No. 2:19-cv-01729-KJD-DJA

ORDER

Presently, before the Court is Plaintiff's Motion for Partial Default Judgment (#33) and Motion for Default Judgment (#65). Defendants filed a response to the second Motion for Default Judgment, (#67) to which Plaintiff replied. (#68).

I. Factual and Procedural History

Plaintiff Clyde Lewis ("Lewis") filed the present Complaint pursuant to 42 U.S.C. § 1983. After the mandatory screening process under the Prison Litigation Reform Act, the Court permitted the following claims to survive: (1) Claim 1 allegations of free exercise of religion, equal protection, and RLUIPA violations against Defendant Correction Officer (C/O) Mesa; (2) Claim 2 allegations of retaliation against Defendant Aviles; (3) Claim 3 allegations of retaliation and Fourteenth Amendment due process for disciplinary segregation violations against Defendant Ortega; (4) Claim 4 allegations of Fourteenth Amendment due process violations for disciplinary segregation against Defendant Sergeant (Sgt.) Fowler. (#13).

On May 24, 2021, the Government filed the last known addresses of the former employees, Aviles and Ortega. (#22). Lewis then attempted service through the U.S. Marshall Service ("USMS") on Aviles and Ortega but they were unable to be located. (#28). In August 2021, USMS attempted service on Aviles three separate times but each time there was no answer at the address. Id. USMS also attempted service on Ortega, but they were alerted by the current

1 resident that Ortega did not live at the address USMS had on file. Id. On September 22, 2021,  
 2 Lewis filed his first Motion for Partial Default Judgment (#33), asking the Court to enter a  
 3 default order for Defendants Yesenia Aviles (“Aviles”) and Javier Ortega (“Ortega”). Id. On  
 4 February 15, 2022, the Clerk of the Court gave notice to Lewis that without proof of service the  
 5 complaint against Aviles and Ortega could be dismissed without prejudice. (#45). After multiple  
 6 extensions were given to Lewis to attempt service, on June 7, 2022, Lewis filed a Motion  
 7 requesting that the Court order the Nevada Department of Corrections and the Attorney  
 8 General’s office to provide the USMS with all the information they had about Aviles and Ortega  
 9 so that they could be located. (#52). The Court denied the Motion. (#69).

10 On July 15, 2022, Lewis filed a separate Motion for Default Judgment (#67), asking the  
 11 Court to enter judgment against Sgt. Glen Fowler (“Fowler”) and Correctional Officer (“C/O”) Mesa,  
 12 to which the Government responded, and Lewis replied.

## 13 II. Analysis

14 Federal Rule of Civil Procedure (“Rule”) 55(a) provides, “[w]hen a party against whom a  
 15 judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure  
 16 is shown by affidavit or otherwise, the clerk must enter the party’s default.” Rule 4(c)(3)  
 17 provides, “[a]t the plaintiff’s request, the court may order that service be made by a United States  
 18 marshal or deputy marshal or by a person specially appointed by the Court.” Rule 4(m) also  
 19 provides, in part, “... [i]f a defendant is not served within 90 days after the complaint is filed, the  
 20 court— on motion or on its own after notice to the plaintiff— must dismiss the action without  
 21 prejudice against that defendant or order that service be made within a specific time. But if the  
 22 plaintiff shows good cause for the failure, the court must extend the time for service for an  
 23 appropriate period[.]”

24 Lewis has made repeated requests to the Court to order the USMS to act as his own  
 25 private investigative agency and use all available resources to locate Aviles and Ortega. The  
 26 USMS is not obligated to do so. Further, because Aviles and Ortega have not been served, the  
 27 Court cannot grant a default motion against them. Therefore, Lewis’s Motion for Partial Default  
 28 Judgment is denied, and the claims against them are dismissed without prejudice for failure to

1 serve the summons and complaint in compliance with Rule 4(m).

2 Lewis' second Motion for Default Judgment concerns Sgt. Fowler and C/O Mesa, who  
3 have been properly served. Lewis asserts that no answer or other defense was filed by them,  
4 which compels an entry of default. However, Defendants Fowler and Mesa filed an answer on  
5 August 2, 2021. (#26). Therefore, the Court denies the motion for default judgment.

6 III. Conclusion

7 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Partial Default  
8 Judgment (#33) is **DENIED**;

9 **IT IS FURTHER ORDERED** that the claims against Defendants Aviles and Ortega are  
10 **DISMISSED without prejudice**;

11 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Default Judgment (#65) is  
12 **DENIED**.

13 DATED this 22 day of September, 2022.

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16 Kent J. Dawson  
17 United States District Judge  
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